

INTERGOVERNMENTAL AGREEMENT

AMONG
THE STATE OF ARIZONA
AND
THE SALT RIVER PIMA MARICOPA INDIAN COMMUNITY
AND
CITY OF SCOTTSDALE

THIS AGREEMENT is made and entered into this 2nd day of May, 2006 pursuant to Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, (the "State") and the SALT RIVER PIMA MARICOPA INDIAN COMMUNITY, acting by and through its COMMUNITY COUNCIL (the "SRPMIC") and the CITY OF SCOTTSDALE, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

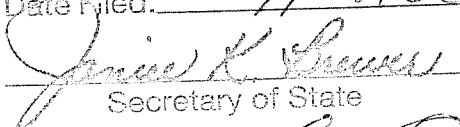
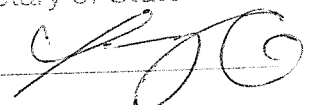
1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The SRPMIC is empowered by Art. VII §1(h) of the SRPMIC Constitution to enter into this Agreement and has by Community Council Resolution SR-2487-2006, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of SRPMIC.

3. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this agreement on behalf of the City.

4. The State, SRPMIC and City desire to participate in a pre-design study, herein referred to as the "Project", which includes but is not limited to a corridor master plan; preliminary environmental documents; preliminary and final concept design for roadway; bicycle/pedestrian and traffic/access management improvements on existing Pima Road from the McDowell Road intersection to the north boundary of the SRPMIC and Scottsdale, just north of the 90th Street/Pima Freeway traffic interchange; and a study for the potential extension of Pima Road southerly from McDowell Road to the intersection of Hayden and Curry Roads. The Parties agree, the final design concept for the Project will include 30% design plans for the recommended roadway improvements, and a recommended phasing and implementation process. The State has programmed an amount up to and not to exceed \$2,000,000.00, for the preparation and contract administration of the Project. It is understood by the Parties, that any monies remaining from the State's said funds shall be available up to the "not to exceed" amount of \$2,000,000.00

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 28327
Filed with the Secretary of State
Date Filed: 7/14/06

Secretary of State
By: 

II. SCOPE OF WORK

1. The City will:

a. Call for Statements of Qualifications from independent consulting engineering firms, select the most qualified firm jointly with SRPMIC, and agree to be the authorized agent for and on behalf of SRPMIC and the State. Retain and contract with Pre-design, Environmental and Design Consultants (the "Consultants"), to prepare pre-design concept studies and all necessary documents including Scoping Documents, Environmental Determination and studies associated with the Project. Be the final authority in the negotiation and selection of the most qualified independent engineering firm and for any contract change orders of same. The selection panel shall have two members each from the City and SRPMIC.

b. Upon completion of negotiation of the consultant contract, invoice the State for the cost of the Project, not to exceed \$2,000,000.00, which includes 10% for contract administration.

c. Invoice the State for the cost of approved contract change orders if any, with the total Project cost not to exceed \$2,000,000.00.

d. Governments traffic projections, and pertinent drainage, buffering wall and utility design drawings for use in the preparation of the Project.

e. Serve as the lead agency for coordinating public involvement activities.

f. Coordinate regular project meetings and work with the SRPMIC and the State to resolve all planning and design issues during the development of the Plan.

1. The SRPMIC will:

a. Participate with the City in the selection of the most qualified independent engineering firm, the negotiation of the consultant contract, and the negotiation of any contract change orders.

b. Provide existing and proposed land use and site development plans, developer-prepared traffic counts and projections, drainage studies and pertinent utility design drawings for use in the preparation of the Project.

c. Assist the City in coordinating public involvement activities.

d. Attend regular project meetings and work with the State and the City to resolve all planning and design issues during the development of the Project.

3. The State will:

a. Upon execution of this Agreement fund a total amount to the City not to exceed \$2,000,000.

b. Provide existing and proposed land use and site development plans, developer-prepared traffic counts and projections, drainage studies and pertinent utility design drawings for use in the preparation of the Project.

c. Attend regular project meetings and work with the SRPMIC and the City to resolve all planning and design issues during the development of the Project.

III. MISCELLANEOUS PROVISIONS

1. Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

2. This Agreement shall remain in full force and effect until completion of said Project, or until June 30, 2008, whichever occurs sooner; provided, however, that this Agreement may be cancelled at any time prior to the award of a consultant contract upon thirty-days (30) written notice to the other parties.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. The Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this contract.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination" subject to 42 USC Sec 2000e-2 as applicable.

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
(602) 712-7525

Salt River Pima Maricopa Indian Community
Attn: Community Manager
10005 E. Osborn Road
Scottsdale, AZ 85256
(480) 850-8001

City of Scottsdale
Attn: Transportation General Manager
7447 E. Indian School Road, Suite 205
Scottsdale, AZ 85251

9. Dispute Resolution; Arbitration

a. Any controversy which shall arise among the parties to this Agreement regarding their rights, duties or liabilities hereunder shall be settled by binding arbitration under the Federal Arbitration Act, 9 U.S.C. §§ 1-14 ("Title 9"), pursuant to the authority of 25 U.S.C. § 416(a)(c) ("Section 416(a)(c)") and in accordance with this Paragraph. Pursuant to Section 416(a)(c), any (a) refusal to submit to arbitration, (b) exercise of a right under Title 9, or (c) enforcement of an arbitration award or decision under this Paragraph is solely within the jurisdiction of the United States District Court, District of Arizona (the "District Court"). An arbitration award under this Paragraph is final unless a party files a motion to vacate or modify the award pursuant to 9 U.S.C. § 12 in the District Court within 30 days of the date of the award. Judgment upon the award under this Paragraph may be confirmed in District Court pursuant to Section 416(a)(c) and 9 U.S.C. § 9.

b. Such binding arbitration shall be conducted, upon the request of any party, before three (3) arbitrators (unless the parties to the arbitration agree to one (1) arbitrator) designated by the American Arbitration Association and in accordance with the rules of such Association (except as such rules may contemplate state court jurisdiction) and as provided for under the Act of November 22, 1983 (97 Stat. 1016). The arbitrators designated to act under this Agreement shall make their award in strict conformity with such rules and shall have no power to depart from or change any of the provisions thereof except as provided herein.

c. Except as provided in this Paragraph, the parties agree that nothing in this Agreement or the AAA Rules is or will be construed to be (a) a waiver of the SRPMIC's sovereign immunity from suit or (b) consent by the SRPMIC to the jurisdiction of any governmental authority, including but not limited to, the State of Arizona or the United States. For the sole purposes of this Agreement, the SRPMIC hereby provides a limited waiver of immunity it may enjoy with respect to controversies, claims and/or causes of action arising out of or related to this Agreement for the limited purpose of arbitration and related federal court jurisdiction as set forth in this Paragraph. SRPMIC further acknowledges and agrees, pursuant to the express limited waiver of sovereign immunity in this Agreement, to submit to the jurisdiction of the arbitration panels described above and agrees to give full legal effect to any award or judgment resulting there from. Nothing in this Paragraph is intended or shall be interpreted to waive the SRPMIC's sovereign immunity in relation to the jurisdiction of the courts of the State of Arizona to hear and resolve disputes. The limited waiver of sovereign immunity provided in this Paragraph is the sole such waiver and nothing elsewhere in this Agreement is, or shall be construed to be, a further waiver or a modification of this waiver.

10. Pursuant to Arizona Revised Statutes § 11-952, (D) attached hereto and incorporated herein is the written determination of each parties legal counsel that the parties are authorized under the laws of this State and Article VII Sec. (1)(h) of the Constitution of the Salt River Pima-Maricopa Indian Community to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

SALT RIVER PIMA MARICOPA INDIAN COMMUNITY ATTEST

By 
JONI M. RAMOS
President

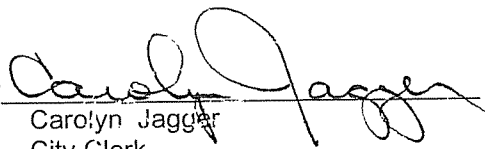
CITY OF SCOTTSDALE

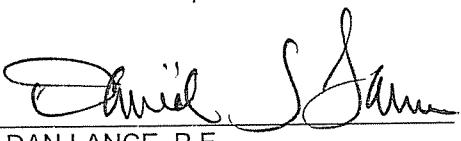
By 
ERICA HARVIER
Council Secretary

ATTEST

By 
MARY MANROSS
Mayor

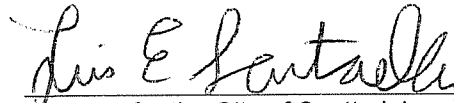
STATE OF ARIZONA
Department of Transportation

By 
Carolyn Jagger
City Clerk


By 
DAN LANCE, P.E.
Deputy State Engineer Valley Transportation

INTERGOVERNMENTAL AGREEMENT DETERMINATION

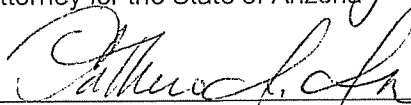
In accordance with the requirements of A.R.S. Section 11-952(D), each of the undersigned attorneys acknowledge that: (1) they have reviewed the above Agreement on behalf of their respective clients; and (2) as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

 for Deborah Robberson

Attorney for the City of Scottsdale



Attorney for the State of Arizona



Attorney for the Salt River Pima Maricopa Indian Community

RESOLUTION NO. 6880

A RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION AND THE SALT RIVER PIMA MARICOPA INDIAN COMMUNITY FOR THE PURPOSE OF COOPERATING A PRE-DESIGN STUDY AND CORRIDOR MASTER PLAN FOR PIMA ROAD GENERALLY FROM MCDOWELL ROAD TO NORTH OF THE 90TH STREET INTERCHANGE.

WHEREAS, the Arizona Revised Statutes 11-951, et. seq., provide that public agencies may enter into intergovernmental agreements for joint operation or cooperative action; and

WHEREAS, Section 3-1 of Article 1 of the Charter of the City of Scottsdale authorizes the City to enter into intergovernmental agreements with various public agencies; and

WHEREAS, the City of Scottsdale and Salt River Pima-Maricopa Indian Community share responsibility for the operations of Pima Road which is a major roadway link between the two communities; and

WHEREAS, the Arizona Department of Transportation has budgeted \$2,000,000 in funds for the improvement of Pima Road; and

WHEREAS, the City of Scottsdale, the Arizona Department of Transportation and Salt River Pima Maricopa Indian Community have identified a need to cooperatively plan for the potential widening of Pima Road to serve users in Scottsdale and in the Salt River Pima Maricopa Indian Community.

NOW, THEREFORE, LET IT BE RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1: Mary Manross, Mayor, is hereby authorized and directed to execute, on behalf of the City of Scottsdale, Intergovernmental Agreement Number 2006-030-COS with the Arizona Department of Transportation and the Salt River Pima-Maricopa Indian Community for the purpose of coordinating pre-design study, corridor master plan and design concept plans for Pima Road between the intersections of McDowell Road on the south and the 90th Street interchange with Loop 101 on the north, as well as a potential extension of the roadway southerly to the intersection of Hayden Road at Curry Road.


PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this 2nd day of May, 2006.

By: 
MARY MANROSS, MAYOR

ATTEST:


Carolyn Jagger, City Clerk

APPROVED AS TO FORM


Deborah Robberson, City Attorney

**SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY**
10,005 East Osborn Road
Scottsdale, Arizona 85256

RESOLUTION NUMBER: SR-2487-2006

A RESOLUTION TO ACCEPT THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, THE STATE OF ARIZONA THROUGH THE ARIZONA DEPARTMENT OF TRANSPORTATION, AND THE CITY OF SCOTTSDALE TO PARTICIPATE IN A PRE-DESIGN STUDY FOR PIMA ROAD FROM MCDOWELL ROAD INTERSECTION TO THE NORTH BOUNDARY OF THE COMMUNITY AND THE CITY OF SCOTTSDALE JUST NORTH OF THE 90TH STREET/PIMA FREEWAY INTERCHANGE AND A STUDY FOR THE POTENTIAL EXTENSION OF PIMA ROAD SOUTHERLY FROM MCDOWELL ROAD TO THE HAYDEN/CURRY ROAD INTERSECTION.

WHEREAS The Salt River Pima-Maricopa Indian Community ("Community") Council has the authority under Art. VII, § 1 (h) to consult, negotiate, contract, conclude and perform agreements with federal, state, [and] local governments and Indian tribal governments on behalf of the Salt River Pima-Maricopa Indian Community; and

WHEREAS The State of Arizona, through the Arizona Department of Transportation ("ADOT") and the City of Scottsdale ("Scottsdale") desire to participate with the Community in a pre-design study, which includes a corridor master plan, preliminary environmental documents and preliminary and final concept design for roadway, bicycle/pedestrian, and traffic/access management improvements on existing Pima Road from McDowell Road intersection to the north boundary of the Community and City of Scottsdale just north of the 90th Street/Pima Freeway Interchange and a study for the potential extension of Pima Road southerly from McDowell Road to the Hayden/Curry Road Intersection, hereinafter referred to as the "Project"; and

WHEREAS The Parties agree, the final design concept for the Project will include 30% design plans for the recommended roadway improvements, and a recommended phasing and implementation process; and

WHEREAS The State (ADOT) has programmed an amount up to and not to exceed \$2,000,000.00, for the preparation and contract administration of the Project with the understanding that any monies remaining from the ADOT's funds shall be available up to the "Not to exceed" amount of \$2,000,000.00; and

WHEREAS The Community, ADOT and Scottsdale intend to enter into an Intergovernmental Agreement for the purposes of conducting a pre-design study of the above described area, a copy of which is attached hereto and incorporated by reference; and

WHEREAS The Intergovernmental Agreement contains, among other terms, a limited waiver of the Community's sovereign immunity whereby the Community agrees, after informal discussions, to resolve any disputes arising pursuant to the Agreement solely through binding arbitration with the duty to arbitrate, or to enforce an arbitration award, in the United States District Court in Phoenix, Arizona. The language in Section III (9)(a) of the proposed intergovernmental agreement is for the sole purpose of allowing arbitration and reads as follows:

9. Dispute Resolution; Arbitration

a. Any controversy which shall arise among the parties to this Agreement regarding their rights, duties or liabilities hereunder shall be settled by

binding arbitration under the Federal Arbitration Act, 9 U.S.C. §§ 1-14 ("Title 9"), pursuant to the authority of 25 U.S.C. § 416(a)(c) ("Section 416(a)(c)") and in accordance with this Paragraph. Pursuant to Section 416(a)(c), any (a) refusal to submit to arbitration, (b) exercise of a right under Title 9, or (c) enforcement of an arbitration award or decision under this Paragraph is solely within the jurisdiction of the United States District Court, District of Arizona (the "District Court"). An arbitration award under this Paragraph is final unless a party files a motion to vacate or modify the award pursuant to 9 U.S.C. § 12 in the District Court within 30 days of the date of the award. Judgment upon the award under this Paragraph may be confirmed in District Court pursuant to Section 416(a)(c) and 9 U.S.C. § 9.

- b. Such binding arbitration shall be conducted, upon the request of any party, before three (3) arbitrators (unless the parties to the arbitration agree to one (1) arbitrator) designated by the American Arbitration Association and in accordance with the rules of such Association (except as such rules may contemplate state court jurisdiction) and as provided for under the Act of November 22, 1983 (97 Stat. 1016). The arbitrators designated to act under this Agreement shall make their award in strict conformity with such rules and shall have no power to depart from or change any of the provisions thereof except as provided herein.
- c. Except as provided in this Paragraph, the parties agree that nothing in this Agreement or the AAA Rules is or will be construed to be (a) a waiver of the SRPMIC's sovereign immunity from suit or (b) consent by the SRPMIC to the jurisdiction of any governmental authority, including but not limited to, the State of Arizona or the United States. For the sole purposes of this Agreement, the SRPMIC hereby provides a limited waiver of immunity it may enjoy with respect to controversies, claims and/or causes of action arising out of or related to this Agreement for the limited purpose of arbitration and related federal court jurisdiction as set forth in this Paragraph. SRPMIC further acknowledges and agrees, pursuant to the express limited waiver of sovereign immunity in this Agreement, to submit to the jurisdiction of the arbitration panels described above and agrees to give full legal effect to any award or judgment resulting therefrom. Nothing in this Paragraph is intended or shall be interpreted to waive the SRPMIC's sovereign immunity in relation to the jurisdiction of the courts of the State of Arizona to hear and resolve disputes. The limited waiver of sovereign immunity provided in this Paragraph is the sole such waiver and nothing elsewhere in this Agreement is, or shall be construed to be, a further waiver or a modification of this waiver.
- d. Except as provided in this paragraph, the parties agree that nothing in this agreement or the AAA rules is or will be construed to be a waiver of the state's immunity under the 11th amendment of the U.S. Constitution.

Further, each party agrees to indemnify the other as stated in Section III (1) of the Agreement:

1. Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims

which result in vicarious/derivative liability to the indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

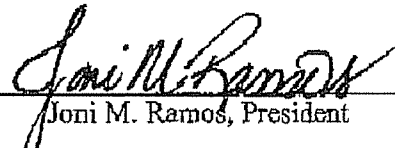
NOW THEREFORE BE IT RESOLVED by the Salt River Pima-Maricopa Indian Community Council that:

1. The attached Intergovernmental Agreement between the Salt River Pima-Maricopa Indian Community, ADOT and Scottsdale is hereby approved; and
2. The Community hereby agrees: a) to resolve any disputes arising under the Intergovernmental Agreement between the Parties through and in strict conformance with Section 7, Arbitration, as contained in the Intergovernmental Agreement, which requires the Community to provide a limited waiver of its sovereign immunity to resolve disputes arising under the Agreement solely through informal discussions and then through binding Arbitration, respectively; and b) that the enforcement of any arbitration award, and of the duty to arbitrate, will be in the United States District Court in Phoenix, Arizona; and
3. The Community agrees to indemnify as stated in Section III (1) of the Agreement; and
4. The Community President and the Community Vice President, or either of them, are authorized and directed to execute said Intergovernmental Agreement and to take all actions reasonable or necessary to carry out the purposes of this Resolution.


CERTIFICATION

Pursuant to the authority contained in Article VII, Section 1(e), of the Constitution of the Salt River Pima-Maricopa Indian Community, approved by the Members of the Community on February 28, 1990, and approved by the Secretary of the Interior on March 19, 1990, the foregoing resolution was adopted on June 21, 2006, at a duly called meeting held by the Community Council in Salt River, Arizona, at which a quorum of 5 members were present, by a vote of 5 for, 0 against, 0 abstentions, and 4 excused.

**SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY COUNCIL**


Joni M. Ramos, President

ATTEST:


Erica Harvier, Secretary

